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c 71 Intervenor Funding Project Act, 1988

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CHAPTER 71

**An Act for the establishment and conduct of a
Project to provide Funding to Intervenor in
proceedings before a Joint Board
under the Consolidated Hearings Act, 1981
and before the Ontario Energy Board and the
Environmental Assessment Board
and to provide for certain matters in relation to
costs before those Boards**

Assented to December 15th, 1988

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:

PART I

INTERVENOR FUNDING

Definitions

1. In this Part,

"commis- sion"	"board" means a joint board, the Ontario Energy Board or the Environmental Assessment Board;
"comité d'aide financière"	"funding panel" means an intervenor funding panel appointed under this Part;
"proposant tenu de verser une aide financière"	"funding proponent" means a proponent who has been named by a funding panel as a funding proponent;
"intervenant"	"intervenor" means a person or group of persons that has been granted status as an intervenor in a proceeding before a board;
"aide financière aux intervenants"	"intervenor funding" means funding awarded under this Part to an intervenor in advance of a hearing before a board;
"commission mixte"	"joint board" means a joint board established under the <i>Consolidated Hearings Act, 1981</i> to consider a matter arising under the <i>Environmental Assessment Act</i> , the

1981, c. 20

R.S.O. 1980,
cc. 140, 141,
361

Environmental Protection Act or the *Ontario Water Resources Act*;

“proposant” “proponent” means a party whose undertaking, in the opinion of a funding panel, is the subject-matter of the hearing or another party or individual or corporation, who, in the opinion of a funding panel, is potentially a major financial beneficiary of the decision of the board.

Purpose

2. The purpose of this Part is to provide for the establishment and conduct of a pilot project related to the provision of intervenor funding in proceedings before boards.

Right to
apply for
intervenor
funding

3.—(1) An intervenor in a proceeding before a board may apply to the board, as provided under this Part, for intervenor funding.

Notice

(2) A board shall set out in its notices of hearing,

(a) a statement of the right set out in subsection (1); and

(b) a brief statement of where and when applications for status as an intervenor can be made.

Idem

(3) As soon as all applications for intervenor status have been decided, the board shall notify all intervenors of their right to apply for intervenor funding and it shall forthwith advise the intervenors of the last date for making an application.

Adjournment

(4) After determining all issues related to intervenor status, a board shall not proceed further with a hearing,

(a) until the last date for applying for intervenor funding has passed and no applications are received; or

(b) until the funding panel for the hearing has advised the board that all applications for intervenor funding have been decided if any applications are received.

Intervenor funding panel required	4.—(1) An intervenor funding panel shall be appointed for a hearing before a board if any applications are received for intervenor funding.
Duty of funding panels	(2) A funding panel shall determine, with respect to the hearing for which it is appointed, all issues related to the determination of who are the proponents and funding proponents and eligibility for intervenor funding and the amount of the funding.
Restriction	(3) A member of a funding panel shall not determine any issue in the hearing for which the panel was appointed other than those referred to in subsection (2).
Composition and appointment of funding panels	5.—(1) Except in the case of a joint board, a funding panel shall consist of one person named by the chairperson of the board from among its members.
Idem	(2) The funding panel of a joint board shall consist of one person named by the chairperson of the Ontario Municipal Board from among its members and one person named by the chairperson of the Environmental Assessment Board from among its members.
Chairperson	(3) The member named under subsection (2) by the chairperson of the Environmental Assessment Board shall be the chairperson of the funding panel of the joint board.
Decision of joint board	(4) If the members of the funding panel of a joint board are unable to reach a common decision, the decision of the panel's chairperson shall be deemed to be the panel's decision.
Funding proponents	6.—(1) Before dealing with any applications for intervenor funding, a funding panel shall determine who is or are the funding proponents.
Notice	(2) For purposes of the determination required by subsection (1), a funding panel shall give notice to a proponent of its intention to name the proponent as a funding proponent.
Hearing	(3) If a proponent who receives a notice under subsection (2) files with the board an objection to being named as a funding proponent, the funding panel shall hold a hearing to determine whether the proponent will be named as a funding proponent.

Deemed
funding
proponent

(4) A proponent who does not file an objection within the time allowed by the funding panel shall be named as a funding proponent.

Power of
board

(5) A funding panel may decide that there is no funding proponent.

Party status

(6) A funding proponent is entitled to be a party to hearings before the funding panel and with respect to applications under section 12.

Eligibility for
intervenor
funding

7.—(1) Intervenor funding may be awarded only in relation to issues,

- (a) which, in the opinion of the funding panel, affect a significant segment of the public; and
- (b) which, in the opinion of the funding panel, affect the public interest and not just private interests.

Idem

(2) In deciding whether to award intervenor funding to an intervenor, the funding panel shall consider whether,

- (a) the intervenor represents a clearly ascertainable interest that should be represented at the hearing;
- (b) separate and adequate representation of the interest would assist the board and contribute substantially to the hearing;
- (c) the intervenor does not have sufficient financial resources to enable it to adequately represent the interest;
- (d) the intervenor has made reasonable efforts to raise funding from other sources;
- (e) the intervenor has an established record of concern for and commitment to the interest;
- (f) the intervenor has attempted to bring related interests of which it was aware into an umbrella group to represent the related interests at the hearing;
- (g) the intervenor has a clear proposal for its use of any funds which might be awarded; and

- (h) the intervenor has appropriate financial controls to ensure that the funds, if awarded, are spent for the purposes of the award.

Idem

(3) In determining the amount of an award of intervenor funding, the funding panel shall,

- (a) if the proposal includes the use of lawyers in private practice, assess legal fees at the legal aid rate under the legal aid plan in effect on the day of the award for work necessarily and reasonably performed;
- (b) set a ceiling in respect of disbursements that may be paid as part of the award and such disbursements shall be restricted to eligible disbursements;
- (c) deduct from the award funds that are reasonably available to the applicant from other sources.

Idem

(4) A funding panel may award intervenor funding subject to such conditions as it sets out in its order.

Definition
"débours
remboursa-
bles"

(5) In clause (3) (b), "eligible disbursements" means disbursements for consultants, expert witnesses, typing, printing, copying and transcripts necessary for the representation of the interest and such other expenditures as may be named in the regulations made under this Part as eligible disbursements.

Proponent to
pay

8.—(1) An award of intervenor funding is an award against the funding proponent named in the order of the funding panel and shall be paid by the funding proponent at the times and in the amounts specified in the panel's order.

Idem

(2) If there is more than one funding proponent, the funding panel may determine the proportion of an award of intervenor funding that each funding proponent shall pay.

Idem

(3) If the funding panel is of the opinion that an award of intervenor funding will result in significant financial hardship to the funding proponent, the panel may refuse to make the award or it may reduce the size of the award.

Supervision

9.—(1) It is a condition of every award of intervenor funding that the intervenor in whose favour an award is made allow the board under whose jurisdiction the award was made, or its agents, access to the books and records of the intervenor to insure that conditions set by the funding panel are being or have been met.

Enforcement
of conditions

(2) If an intervenor fails without reasonable cause to comply with the conditions of an award, the intervenor and its directors and officers, upon the order of the board, shall be jointly and severally liable to repay to the proponent the amount of the award, or such part thereof, as the board may order.

Rules

10. Rules regulating the practice and procedure for matters to be determined under this Act in relation to hearings before a board may be made in the same manner as rules regulating the practice and procedure of the board.

Regulations

11. The Lieutenant Governor in Council may make regulations naming expenditures that shall be considered to be eligible disbursements.

Supple-
mentary
funding

12.—(1) An intervenor who has received intervenor funding may apply to the board at any time up to the end of the hearing for supplementary funding and the board may award the funding if it is of the opinion, having regard to all of the circumstances, that the original award was inadequate.

Idem

(2) Sections 7 to 11 apply with necessary modifications to supplementary funding.

Costs

(3) The amount of intervenor funding received by an intervenor shall be deducted by the board from any costs awarded to the intervenor.

Appeals

13.—(1) An appeal lies only on a matter of law with respect to a decision on intervenor funding.

High Court

(2) An appeal shall be commenced by way of application to the High Court and shall be heard by a single judge.

Powers of
judge

(3) If the judge finds an error of law, the judge may,

- (a) make any order or decision that the funding panel or board, as the case may be, ought to have or could have made;
- (b) order a rehearing by the funding panel or the board, as the case may be;

(c) dismiss the appeal.

Crown bound **14.** This Part binds the Crown.

Application **15.** This Part applies only to hearings in relation to which public notice of hearing is first given after the coming into force of this section.

Repeal **16.**—(1) This Part is repealed on the day that is three years after the day it comes into force or on such day thereafter as is named by proclamation of the Lieutenant Governor.

Transitional (2) Proceedings commenced before the repeal of this Part shall be taken up and completed as if it had not been repealed.

PART II

AMENDMENTS TO CERTAIN ACTS

17. Section 7 of the *Consolidated Hearings Act, 1981*, being chapter 20, is amended by adding thereto the following subsection:

Considerations not limited (7) In awarding costs, a joint board is not limited to the considerations that govern awards of costs in any court.

18. Section 18 of the *Environmental Assessment Act*, being chapter 140 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsections:

Costs (16a) The Board may award the costs of a proceeding before it.

Payment (16b) The Board may order to whom and by whom the costs are to be paid.

Assessment (16c) The Board may fix the amount of the costs or direct that the amount be assessed and it may direct the scale according to which they are to be assessed and by whom they are to be assessed.

Considerations not limited (16d) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court.

19. Subsections 33 (5), (6), (7) and (8) of the *Environmental Protection Act*, being chapter 141 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1988, chapter 54, section 22, are repealed.

20. Section 28 of the *Ontario Energy Board Act*, being chapter 332 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Considerations not limited

(5) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court.

21. Subsections 6 (5), (6), (7) and (8) of the *Ontario Water Resources Act*, being chapter 361 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1988, chapter 54, section 53, are repealed.

Application

22. The amendments set out in sections 17, 18 and 20 apply only to hearings in relation to which public notice of hearing is first given after the coming into force of this section.

Commencement

23. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

24. The short title of this Act is the *Intervenor Funding Project Act, 1988*.